The Memorandum of Understanding executed in May 1979 between the Soil Conservation Service (SCS) and FmHA or its successor agency under Public Law 103–354 should be utilized as the basis for seeking SCS's assistance in this data collection effort. (See FmHA Instruction 2000–D, exhibit A, which is available in any FmHA or its successor agency under Public Law 103–354 Office.) Direct contacts should then be made with State agencies, in particular with the appropriate office of State planning, to determine the availability of State inventories and State land use policies and priorities. Similar discussions should be held with substate regional planning agencies and clearinghouses with assistance being provided in this effort by District Directors. County Supervisors shall contact local officials and shall be responsible for being familiar with and for assembling similar inventories, land use policies, or protective requirements developed by the local government agencies within the supervisor's territorial jurisdiction.

8. Another important element of the natural resource management guide shall be the examination of any major environmental impacts on the State or a substate area resulting from the cumulative effects of FmHA or its successor agency under Public Law 103–354-assisted project over the last several years. In this examination, particular emphasis should be given to the cumulative impacts of water resource projects such as irrigation systems. This should be done in consultation with experts within the appropriate State agencies and the U.S. Geological Survey. The housing programs should also be given a particular emphasis with respect to their cumulative impacts. More detailed guidance on the accomplishment of this cumulative impact section of the natural resource management guide, as well as the overall content of the guide, shall be provided by the Administrator. In preparing the State's natural resource management guide and in assembling inventories of critical resources, Agency staff should not lose sight of the basic purposes of this effort. The development of lengthy and complex guides and the amassing of huge inventories is not our goal. In the end, the material must be useable and serve as a tool for better decisionmaking. The basic purposes of this guide and inventory, then, are to provide a basis for developing comprehensive, statewide, rural development investment strategies that (i) do not conflict with Federal, State, and local mandates to preserve and protect important land and environmental resources, (ii) that do not create short- or long-term development pressures which would lead to the unnecessary conversion of these resources, and (iii) which effectively support and enhance Federal, State, and local plans to preserve these resources.

EXHIBIT C TO SUBPART G OF PART 1940—IMPLEMENTATION PROCEDURES FOR THE FARMLAND PROTECTION POLICY ACT; EXECUTIVE ORDER 11988, FLOODPLAIN MANAGEMENT; EXECUTIVE ORDER 11990, PROTECTION OF WETLANDS; AND DEPARTMENTAL REGULATION 9500–3, LAND USE POLICY

1. *Background.* The Subtitle I of the Agriculture and Food Act of 1981, Pub. L. 97–98, created the Farmland Protection Policy Act. The Act requires the consideration of alternatives when an applicant's proposal would result in the conversion of important farmland to nonagricultural uses. The Act also requires that Federal programs, to the extent practicable, be compatible with State, local government, and private programs and policies to protect farmland. The Soil Conservation Service (SCS), as required by the Act, has promulgated implementation procedures for the Act at 7 CFR part 658 which are hereafter referred to as the SCS rule. This rule applies to all federal agencies. The Departmental Regulation 9500–3, Land Use Policy (the Departmental Regulation), also requires the consideration of alternatives but is much broader than the Act in that it addresses the conversion of land resources other than farmland. The Departmental Regulation is included as exhibit A to this subpart and affects only USDA agencies. For additional requirements that apply to some Farmer Program loans and guarantees and loans to an Indian Tribe or Tribal Corporation and that cover the conservation of wetlands and highly erodible land, see exhibit M of this subpart.

2. *Implementation.* Each proposed lease or disposal of real property by FmHA or its successor agency under Public Law 103–354 and application for financial assistance or subdivision approval will be reviewed to determine if it would result in the conversion of a land resource addressed in the Act, Executive Orders, or Departmental Regulation and as further specified below. Those actions that are determined to result in the lease, disposal or financing of an existing farm, residential, commercial or industrial property with no reasonably foreseeable change in land use and those actions that solely involve the renovation of existing structures or facilities would require no further review.[1] Since these actions have no potential to convert land uses, this finding would simply be made by the preparer in completing the environmental assessment for the action.

[1] See special procedures in item 3 of this exhibit if the existing structure or real property is located in a floodplain or wetland.

Also, actions that convert important farmland through the construction of on-farm structures necessary for farm operations are exempt from the farmland protection provisions of this exhibit. For other actions, the following implementation steps must be taken:

a. Determine whether important land resources are involved. The Act comes into play whenever there is a potential to affect important farmland. The Departmental Regulation covers important farmland as well as the following land resources: prime forest land, prime rangeland, wetlands and floodplains. Hereafter, these land resources are referred to collectively as important land resources. Definitions for these land resources are contained in the appendix to the Departmental Regulation. The SCS rule also defines important farmland for purposes of the Act. Since the SCS's definition of prime farmland differs from the Departmental Regulation's definition, both definitions must be used and if either or both apply, the provisions of this exhibit must be implemented. It is important to note the definition of important farmland in both the SCS rule and the Departmental Regulation because it includes not only prime and unique farmland but additional farmland that has been designated by a unit of State or local government to be of statewide or local importance and such designation has been concurred in by the Secretary acting through SCS. In completing the environmental assessment or Form FmHA or its successor agency under Public Law 103–354 1940–22, ''Environmental Checklist For Categorical Exclusions,'' the preparer must determine if the project is either located in or will affect one or more of the land resources covered by the SCS rule or the Departmental Regulation. Methods for determining the location of important land resources on a project-by-project basis are discussed immediately below. As reflected several times in this discussion, SCS personnel can be of great assistance in making agricultural land and natural resource evaluation, particularly when there is no readily available documentation of important land resources within the project's area of environmental impact. It should be remembered that FmHA or its successor agency under Public Law 103–354 and SCS have executed a Memorandum of Understanding in order to facilitate site review assistance. (See FmHA Instruction 2000–D, exhibit A, available in any FmHA or its successor agency under Public Law 103–354 office.)

(1) *Important Farmland, Prime Forest Land, Prime Rangeland*—The preparer of the environmental review document will review available SCS important farmland maps to determine if the general area within which the project is located contains important farmland. Because of the large scale of the important farmland maps, the maps should be used for general review purposes only and not to determine if sites of 40 acres or less contain important farmland. If the general area contains important farmland or if no important farmland map exists for the project area, the preparer of the environmental review will request SCS's opinion on the presence of important farmland by completing Form AD–1006, ''Farmland Conversion Impact Rating,'' according to its instructions, and transmitting it to the SCS local field office having jurisdiction over the project area. This request will also indicate that SCS's opinion is needed regarding the application to the project site of both definitions of prime farmland, the one contained within its rule and the one contained within the Departmental Regulation. SCS's opinion is controlling with respect to the former definition and advisory with respect to the latter. No request need be sent to SCS for an action meeting one of the exemptions contained in item number 2 of this exhibit.

(2) *Floodplain*—Review the most current Flood Insurance Rate Map or Flood Insurance Study issued for the project area by the Federal Emergency Management Administration (FEMA). Information on the most current map available or how to obtain a map free of charge is available by calling FEMA's toll free number 800–638–6620. When more specific information is needed on the location of a floodplain, for example, the project site may be near the boundary of a floodplain; or for assistance in analyzing floodplain impacts, it is often helpful to contact FEMA's regional office staff. Exhibit J of this subpart contains a listing of these regional offices and the appropriate telephone numbers.

If a FEMA floodplain map has not been prepared for a project area, detailed assistance is normally available from the following agencies: The U.S. Fish and Wildlife Service (FWS), SCS, Corps of Engineers, U.S. Geological Survey (USGS), or appropriate regional or State agencies established for flood prevention purposes.

(3) *Wetlands*—FWS is presently preparing wetland maps for the nation. Each FWS regional office has a staff member called a Wetland Coordinator. These individuals can provide updated information concerning the status of wetland mapping by FWS and information on State and local wetland surveys. Exhibit K of this subpart contains a listing of Wetland Coordinators arranged by FWS regional office and geographical area of jurisdiction. If the proposed project area has not been inventoried, information can be obtained by using topographic and soils maps or aerial photographs. State-specific lists of wetland soils and wetland vegetation are also available from the FWS Regional Wetland coordinators. A site visit can disclose evidence of vegetation typically associated with wetland areas. Also, the assistance of

FWS field staff in reviewing the site can often be the most effective means. Because of the unique wetland definition used in exhibit M of this subpart, SCS wetland determinations are required for implementing the wetland conservation requirements of that exhibit.

b. *Findings* (1) *Scope*—Although information on the location and the classification of important land resources should be gathered from appropriate expert sources, as well as their views on possible ways to avoid or reduce the adverse effects of a proposed conversion, it must be remembered that it is FmHA or its successor agency under Public Law 103–354's responsibility to weigh and judge the feasibility of alternatives and to determine whether any proposed land use change is in accordance with the implementation requirements of the Act and the Departmental Regulation. Consequently, after reviewing as necessary, the project site, applicable land classification data, or the results of consultations with appropriate expert agenices, the FmHA or its successor agency under Public Law 103–354 preparer must determine, as the second implementation step, whether the applicant's proposal:

(a) Is compatible with State, unit or local government, and private programs and policies to protect farmland; and

(b) Either will have no effect on important land resources; or

(c) If there will be a direct or indirect conversion of such a resource, (i) whether practicable alternatives exist to avoid the conversion; and

(d) If there are no alternatives, whether there are practicable measures to reduce the amount of the conversion.

(2) *Determination of No Effect*— If the preparer determines that there is no potential for conversion and that the proposal is compatible, this determination must be so documented in the environmental assessment for a Class II action or the appropriate compliance blocks checked in the Class I assessment or Checklist for Categorical Exclusions based on whichever document is applicable to the action being reviewed.

(3) *Determination of Effect or Incompatibility*— Whenever the preparer determines that an applicant's proposal may result in the direct or indirect conversion of an important land resource or may be incompatible with State, unit of local government, or private programs and policies to protect farmland, the following further steps must be taken.

(a) *Search for Practicable Alternatives*[2]—In consultation with the applicant and the interested public, the preparer will carefully analyze the availability of practicable alternatives that avoid the conversion or incompatibility Possible alternatives include:

(i) The selection of an alternative site;

(ii) The selection of an alternative means to meet the applicant's objectives; or

(iii) The denial of the application, *i.e.*, the no-action alternative.

When the resource that may be converted is important farmland, the preparer will follow the Land Evaluation and Site Assessment (LESA) point system contained within the SCS rule in order to evaluate the feasibility of alternatives. When the proposed site receives a total score of less than 160 points, no additional sites need to be evaluated. Rather than use the SCS LESA point system, the State Director has the authority to use State or local LESA systems that have been approved by the governing body of such jurisdiction and the SCS state conservationist. After this authority is exercised, it must be used for all applicable FmHA or its successor agency under Public Law 103–354 actions within the jurisdiction of that approved LESA system.

(b) *Inform the Public*—The Department Regulation requires us in section 6, Responsibilities, to notify the affected landholders at the earliest time practicable of the proposed action and to provide them an opportunity to review the elements of the action and to comment on the action's feasibility and alternatives to it. This notification requirement only applies to Class I and Class II actions and not to categorical exclusions that lose their status as an exclusion for any of the reasons stated in §1940.317(e) of this subpart. The notification will be published and documented in the manner specified in §1940.331 of this subpart and will contain the following information:

(i) A brief description of the application or proposal and its location;

(ii) The type(s) and amount of important land resources to be affected;

(iii) A statement that the application or proposal is available for review at an FmHA or its successor agency under Public Law 103–354 field office (specify the one having jurisdiction over the project area); and

(iv) A statement that any person interested in commenting on the application or proposal's feasibility and alternatives to it may do so by providing such comments to FmHA or its successor agency under Public Law 103–354 within 30 days following the date of publication. (Specify the FmHA or its successor agency under Public Law 103–354 office processing the application or proposal for receipt of comments.)

[2] When the action involves the disposal of real property determined not suitable for disposition to persons eligible for FmHA or its successor agency under Public Law 103–354's financial assistance programs, the consideration of alternatives is limited to those that would result in the best price.

Further consideration of the application or proposal must be delayed until expiration of the public comment period. Consequently, publication of the notice as early as possible in the review process is both in the public's and the applicant's interest. Any comments received must be considered and addressed in the subsequent Agency analysis of alternatives and mitigation measures. It should be understood that scheduling a public information meeting is not required but may be helpful based on the number of comments received and types of issues raised.

(c) *Determine Whether Practicable Alternative Exists*—(i) Alternative exists—If the preparer concludes that a practicable alternative exists, the preparer will complete step 2b(3)(e)(ii) of this exhibit and transmit the assessment for the approving official's review in the manner specified in §1940.316 of this subpart. If the findings of this review are similar to the preparer's recommendation, FmHA or its successor agency under Public Law 103–354 will inform the applicant of such findings and processing of the application will be discontinued. Should the applicant still desire to pursue the proposal, the applicant is certainly free to do so but not with the further assistance of FmHA or its successor agency under Public Law 103–354. Should the applicant be interested in amending the application to reflect the results of the alternative analysis, the preparer will work closely with the applicant to this end. Upon receipt of the amended application, the preparer must reinstitute this implementation process at that point which avoids the duplication of analysis and data collection undertaken in the original review process.

If the results of the approving official(s) review differs from the preparer's recommendations, the former will ensure that the findings are appropriately documented in step 2b(3)(e)(ii) of this exhibit and any remaining consideration given to mitigation measures, step 2b(3)(d) of this exhibit.

(ii) No Practicable Alternative Exists—On the other hand, if the preparer concludes that there is no practicable alternative to the conversion, the preparer must then continue with step 2b(3)(d) of this exhibit, immediately below.

(d) *Search for Mitigation Measures*— Once the preparer determines that there is no practicable alternative to avoiding the conversion or incompatibility, including the no-action alternative, all practicable measures for reducing the direct and indirect amount of the conversion must be included in the application. Some examples of mitigation measures would include reducing the size of the project which thereby reduces the amount of the important land resource to be converted. This is a particularly effective mitigation measure when the resource is present in a small area, as is often the case with wetlands or floodplains. A corresponding method of mitigation would be to maintain the project size or number of units but decrease the amount of land affected by increasing the density of use. Finally, mitigation can go as far as the selection of an alternative site. For example, in a housing market area composed almost entirely of important farmland, any new proposed subdivision site would result in conversion. However, a proposed site within or contiguous to an existing community has much less conversion potential, especially indirect potential, than a site a mile or two from the community. The LESA system can also be used to identify mitigation measures when the conversion of important farmland cannot be avoided.

(e) *Document Findings*— Upon completion of the above steps, a written summary of the steps taken and the reasons for the recommendations reached shall be included in the environmental assessment along with either one of the following recommendations as applicable. The following example assumes that important farmland is the affected resource and that the inappropriate phrase within the brackets would be deleted.

(i) The application would result in the direct or indirect conversion of important farmland and (is/is not) compatible with State, unit of local government, or private programs and policies to protect farmland. It is recommended that FmHA or its successor agency under Public Law 103–354 determine, based upon the attached analysis, that there is no practicable alternative to this and that the application contains all practicable measures for reducing the amount of conversion (or limiting the extent of any identified incompatibility.)

(ii) The application would result in direct or indirect conversion of important farmland and (is/is not) incompatible with State, unit of local government, or private programs and policies to protect farmland. It is recommended that FmHA or its successor agency under Public Law 103–354 determine, based upon the attached analysis, that there is a practicable alternative to this action, and the processing of this application be discontinued.

(f) *Implement findings*—The completed environmental assessment and the Agency's determination of compliance with the Act, the Departmental Regulation and Executive orders will be processed and made according to §1940.316 of this subpart. Whenever this determination is as stated in step 2b(3)(e)(i) above, the action will be so structured as to ensure that any recommended mitigation measures are accomplished. See §1940.318(g) of this subpart. Whenever the determination is as stated in step 2b(3)(e)(ii) above, the applicant shall be so informed and processing of the application discontinued. Any further FmHA or its successor agency under Public

Law 103–354 involvement will be as specified in Item 2b(3)(c)(i) of this exhibit.

3. *Special Procedures and Considerations When a Floodplain or Wetland Is the Affected Resource Under Executive Order 11988 and 11990.* a. *Scope.* (1) Geographical Area—The geographical area that must be considered when a floodplain is affected varies with the type of action under consideration. Normally the implementation procedures beginning in Item 2a of this exhibit are required when the action will impact, directly or indirectly, the 100-year floodplain. However, when the action is determined by the preparer to be a critical action, the minimum floodplain of concern is the 500-year floodplain. A critical action is an action which, if located or carried out within a floodplain, poses a greater than normal risk for flood-caused loss of life or property. Critical actions include but are not limited to actions which create or extend the useful life of the following facilities:

(a) Those facilities which produce, use, or store highly volatile, flammable, explosive, toxic or water-reactive materials;

(b) Schools, hospitals, and nursing homes which are likely to contain occupants who may not be sufficiently mobile to avoid the loss of life or injury during flood and storm events;

(c) Emergency operation centers or data storage centers which contain records or services that any become lost or inoperative during flood and storm events; and

(d) Multi-family housing facilities designed primarily (over 50 percent) for handicapped individuals.

(2) Threshold of Impact—The Executive orders differ from the Act and the Departmental Regulation in that the Executive orders' requirements apply not only to the conversion of floodplains or wetlands but to any impacts upon them. Impacts are defined as changes in the natural values and functions of a wetland or floodplain. Therefore, there would be an impact to a floodplain whenever either (a) the action or its related activities would be located within a floodplain, or (b) the action through its indirect impacts has the potential to result in development within a floodplain. The only exception to this statement is when the preparer determines that the locational impact is minor to the extent that the floodplain's or wetland's natural values and functions are not affected.

b. *Treatment of Existing Structures.* (1) Non-FmHA or its Successor Agency under Public Law 103–354-Owned Properties—The Executive orders can apply to actions that are already located in floodplains or wetlands; that is, where the conversion has already occurred. The implementation procedures beginning in item 2a of this exhibit must be accomplished for any action located in a floodplain or wetland and involving either (a) the purchase of an existing structure or facility or (b) the rehabilitation, renovation, or adaptive reuse of an existing structure or facility when the work to be done amounts to a substantial improvement. A substantial improvement means any repair, reconstruction, or improvement of a structure the cost of which equals or exceeds 50 percent of the market value of the structure either (a) before the improvement or repair is started, or (b) if the structure has been damaged, and is being restored, before the damage occurred. The term does not include (a) any project for improvement of a structure to comply with existing State or local health sanitary or safety code specifications which are solely necessary to assure safe living conditions or (b) any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places.

(2) FmHA or its Successor Agency under Public Law 103–354-Owned Real Property—The requirement in paragraph 3 b (1) immediately above also applies to any substantial improvements made to FmHA or its successor agency under Public Law 103–354-owned real property with the exception of the public notice requirements of this exhibit. Irrespective of any improvements, whenever FmHA or its successor agency under Public Law 103–354 real property located in a floodplain or wetland is proposed for lease or sale, the official responsible for the conveyance must determine if the property can be safely used. If not, the property should not be sold or leased. Otherwise, the conveyance must specify those uses that are restricted under identified Federal, State, and local floodplains or wetlands regulations as well as other appropriate restrictions, as determined by the FmHA or its successor agency under Public Law 103–354 official responsible for the conveyance, to the uses of the property by the leasee or purchaser and any successors, except where prohibited by law. Appropriate restrictions will be developed in consultation with the U.S. Fish and Wildlife Service (FWS) as specified in the Memorandum of Understanding with FWS contained in subpart LL of part 2000 of this chapter. Applicable restrictions will be incorporated into quitclaim deeds with the consent and approval of the Regional Attorney, Office of the General Counsel. Upon application by the owner of any property so affected and upon determination by the appropriate FmHA or its successor agency under Public Law 103–354 official that the condition for which a deed restriction was imposed no longer exists, the restriction clause may be released. A listing of any restrictions shall be included in any notices announcing the proposed sale or lease of the property. At the time of first inquiry, prospective purchasers must be informed of the property's location in a floodplain or wetland and the use restrictions that will apply. A written notification to this effect must be provided to the

prospective purchaser who must acknowledge the receipt of the notice. See Item 3 d of this exhibit and subpart C of part 1955 of this chapter for guidance on the proper formats to be used with respect to notices and deed restrictions. The steps and analysis conducted to comply with the requirements of this paragraph must be documented in the environmental review document for the proposed lease or sale.

c. *Mitigation measures.* (1) Alternative Sites—As with the Act and the Departmental Regulation, the main focus of the review process must be to locate an alternative that avoids the impact to a floodplain or wetland. When this is not practicable, mitigation measures must be developed to reduce the impact which in the case of a floodplain or wetland can include finding another site, *i.e.*, a safer site. The latter would be a site at a higher elevation within the floodplain and/or exposed to lower velocity floodflows.

(2) Nonstructural Mitigation Measures—Mitigation measures under the Executive orders are intended to serve the following three purposes: reduce the risks to human safety, reduce the possible damage to structures, and reduce the disruption to the natural values and functions of floodplains and wetlands. More traditional structural measures, such as filling in the floodplain, cannot accomplish these three purposes and, in fact, conflict with the third purpose. Nonstructural flood protection methods, consequently, must be given priority consideration. These methods are intended to preserve, restore, or imitate natural hydrologic conditions and, thereby, eliminate or reduce the need for structural alteration of water bodies or their associated floodplains and wetlands. Such methods may be either physical or managerial in character. Nonstructural flood protection methods are measures which:

(a) Control the uses and occupancy of floodplains and wetlands, e.g., floodplain zoning and subdivision regulations;

(b) Preserve floodplain and wetland values and functions through public ownership; e.g., fee title, easements and development rights;

(c) Delay or reduce the amount of runoff from paved surfaces and roofed structures discharged into a floodway, e.g., construction of detention basins and use of flow restricting barriers on roofs;

(d) Maintain natural rates of infiltration in developed or developing areas, e.g., construction of seepage or recharge basins and minimization of paved areas;

(e) Protect streambanks and shorelines with vegetative and other natural cover, e.g., use of aquatic and water-loving woody plants;

(f) Restore and preserve floodplain and wetland values and functions and protect life and property through regulation, e.g., floodproofing building codes which require all structures and installations to be elevated on stilts above the level of the base flood; and

(g) Control soil erosion and sedimentation, e.g., construction of sediment basins, stabilization of exposed soils with sod and minimization of exposed soil.

(3) Avoid Filling in Floodplains—As indicated above, the Executive orders place a major emphasis on not filling in floodplains in order to protect their natural values and functions. Executive Order 11988 states ''agencies shall, wherever practicable, elevate structures above the base flood level rather than filling in the land.''

(d) *Additional Notification Requirement.* (1) Final Notice—Where it is not possible to avoid an impact to a floodplain or wetland and after all practicable mitigation measures have been identified and agreed to by the prospective applicant, a final notice of the proposed action must be published. This notice will either be part of the notice required for the completion of a Class II assessment or a separate notice if a Class I assessment or an EIS has been completed for the action. The notice will be published and distributed in the manner specified in §1940.331 of this subpart and contain the following information.

(a) A description of the proposd action, its location, and the surrounding area;

(b) A description of the floodplain or wetland impacts and the mechanisms to be used to mitigate them;

(c) A statement of why the proposed action must be located in a floodplain or a wetland;

(d) A description of all significant facts considered in making this determination;

(e) A statement indicating whether the actions conform to applicable State or local floodplain protection standards; and

(f) A statement listing other involved agencies and individuals.

(2) Private Party Notification—For all actions to be located in floodplains or wetlands in which a private party is participating as an applicant, purchaser, or financier, it shall be the responsibility of the approving official to inform in writing all such parties of the hazards associated with such locations.

4. *The Relationship of the Executive Orders to the National Flood Insurance Program.* The National Flood Insurance Program establishes the floodplain management criteria for participating communities as well as the performance standards for building in floodplains so that the structure is protected against flood risks. As such, flood insurance should be viewed only as a financial mitigation measure that must be utilized only after FmHA or its successor agency under Public Law 103–354 determines that there is no practicable alternative for avoiding construction in the floodplain and that all practicable mitigation measures have been included in

the proposal. That is, for a proposal to be located in the floodplain, it is not sufficient simply to require insurance. The Agency's flood insurance requirements are explained in subpart B of part 1806 of this chapter (FmHA Instruction 426.2). It should be understood that an applicant proposing to build in the floodplain is not even eligible for FmHA or its successor agency under Public Law 103–354 financial assistance unless the project area is participating in the National Flood Insurance Program.

[53 FR 36262, Sept. 19, 1988]

EXHIBIT D TO SUBPART G OF PART 1940—IMPLEMENTATION PROCEDURES FOR THE ENDANGERED SPECIES ACT

1. FmHA or its successor agency under Public Law 103–354 shall implement the consultation procedures required under Section 7 of the Endangered Species Act as specified in 50 CFR 402. It is important to note that these consultation procedures apply to the disposal of real property by FmHA or its successor agency under Public Law 103–354 and to all FmHA or its successor agency under Public Law 103–354 applications for financial assistance and subdivision approval, including those applications which are exempt from environmental assessments. (See §1940.310.) Unless repeated in this paragraph, the definitions for the terms utilized are found in 50 CFR 402.02.

2. State Directors shall ensure that State, District, and County Offices maintain current publications of listed and proposed species as well as critical habitats found in their respective jurisdictions.

3. When an application to FmHA or its successor agency under Public Law 103–354 involves financial assistance or permit approval from another Federal agency(s), the FmHA or its successor agency under Public Law 103–354 reviewer shall work with the other Agency to determine a lead Agency for the consultation process. When FmHA or its successor agency under Public Law 103–354 is not the lead Agency, the reviewer shall ensure that the lead Agency informs the approporiate Area Manager, U.S. Fish and Wildlife Service (FWS), or Regional Director, National Marine Fisheries Service (NMFS), of FmHA or its successor agency under Public Law 103–354's involvement.

4. Each disposal action, application for financial assistance or subdivision approval shall be reviewed by the FmHA or its successor agency under Public Law 103–354 official responsible for completing environmental assessments in order to determine if the proposal either may affect a listed species or critical habitat or is likely to jeopardize the continued existence of a proposed species or result in the destruction or adverse modification of a proposed critical habitat.

a. For applications subject to environmental assessments, this review shall be accomplished as part of the assessment.

b. For those applications that are excluded from an environmental assessment, this review shall be documented as part of Form FmHA or its successor agency under Public Law 103–354 1940–22, ''Environmental Checklist For Categorical Exclusions,'' and shall be accomplished as early as possible after receipt of the application and prior to approval of the application.

c. For applications subject to an environmental impact statement, FmHA or its successor agency under Public Law 103–354 shall request from the Area Manager, FWS, and the Regional Director, NMFS, a list of the proposed and listed species that may be in the area of the proposal. Within 30 days, the FWS and NMFS will respond to FmHA or its successor agency under Public Law 103–354 with this list. FmHA or its successor agency under Public Law 103–354 shall then conduct, as part of the process of preparing the draft environmental impact statement, a biological assessment of these species to determine which species are in the area of the proposal and how they may be affected. This biological assessment should be completed within 180 days or a time mutually agreed upon between FmHA or its successor agency under Public Law 103–354 and FWS or NMFS. Upon completion of the biological assessment, if FmHA or its successor agency under Public Law 103–354 determines either that the proposal may affect a listed species or critical habitat or is likely to jeopardize the continued existence of proposed species or result in the destruction or adverse modification of proposed critical habitat, the formal consultation procedures shall be initiated as specified in paragraph 7b below. To the extent practical, these procedures shall be concluded and their results reflected in the draft EIS. For all draft EISs in which FmHA or its successor agency under Public Law 103–354 determines there will be no effect upon a listed or proposed species or critical habitat and FWS or NMFS indicated the presence of such species upon the initial inquiry, a copy of the draft shall be provided to that agency for review and comment.

5. As indicated in paragraph 4 above, the focus of this review process is to determine if the proposal will affect a listed species or critical habitat or is likely to jeopardize the continued existence of a proposed species or result in the destruction or adverse modification of a proposed critical habitat. Because this impact terminology is specific to the Act, it is important to understand its meaning.

a. To jeopardize the continued existence of a species means to engage in a project which reasonably would be expected to reduce the